IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.537 OF 2006

Shri Ananda Bhagwan Jangam & Ors. ...Appellants

Versus

Shri Baburao Tukaram Patil & Ors. ...Respondents

Shri Pratap Patil for the Appellants.
Shri Vikas Mali for the Respondent Nos.1,2,4C, 5 and 7.

CORAM : ABHAY S.OKA, J.
DATED : JULY 12, 2007.

JUDGMENT:

1. On 12th June, 2006 this Court has issued notice for final disposal at admission stage. The Respondent Nos.1, 2, 4C and 7 are represented by an Advocate. As per the office noting, rest of the Respondents are duly served.

2. The Appellants are the original Defendant Nos.1 to 5 and the Respondents are the original Plaintiffs. The trial Court decreed the suit filed by the Respondents by holding that the Respondents have established their lawful possession over the suit land. The trial Court granted the decree of perpetual injunction which is confirmed in Appeal.

3. Considering a limited grievance made by the learned Advocate for the Appellants, following substantial question of law arises:

." Whether the trial Court was justified in granting blanket perpetual injunction which may have result of preventing the Appellants from adopting remedies available in accordance with law?"

4. I have heard the Advocates appearing for the parties on the aforesaid substantial question of law. The Courts below have accepted the case made out by the Respondents that they are in possession of the suit property. The decree of perpetual injunction passed by the trial Court reads thus:

> ". Defendants are perpetually restrained from interfering with the possession of Plaintiffs over cultivable land on eastern, southern and western side of Math i.e. Grampanchayat Property No.620, except samadhis in western portion and open site in front of Math extending upto the northern side road, in suit Survey No.950/2A/1".

5. On plain reading of the operative part of the said decree, it is obvious that there is an error committed by the trial Court in the sense that right of the Defendants in the suit to file an appropriate proceedings against the Plaintiffs for possession ought

to have been reserved. To that extent the operative part of the decree needs modification.

6. Hence, I pass the following order:

(i) Clause (i) of the operative part of the decree passed by the trial Court is modified and now the same will read as under:

". Defendants are perpetually restrained from interfering into the possession of Plaintiffs over cultivable land on eastern, southern and western side of Math i.e. Grampanchayat Property No.620, except samadhis in western portion and open site in front of Math extending upto the northern side road, in suit Survey No.950/2A/1 without following due process of law".

(ii) Rest of the decree passed by the trial Court and confirmed by the Appellate Court is maintained.

(iii) Appeal is partly allowed in above terms.

(iv) There will be no orders as to costs.

JUDGE